



Pierce County

Public Works and Utilities

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WP58785

U.S. Army Corps of Engineers
Attn: CECW-CE, Tammy Conforti
441 G Street N.W.
Washington, D.C. 20314-1000

Re: Comments on Proposed Variance Process of Levee Vegetation Management, Docket Number COE-2010-0007 and Engineering Technical Letter 110-2-571

Dear Ms. Conforti:

Thank you for the opportunity to comment on the above referenced variance process and Engineering Technical Letter (ETL) 110-2-571 "Guidelines for Landscape Planting and Vegetation Management at Levees, Floodwalls, Embankment Dams, and Appurtenant Structures. We consider the U.S. Army Corps of Engineers (the Corps) to be a helpful partner in the management of our levee system and hope to remain in the PL 84-99 program.

That being said, the proposed variance process and ETL 110-2-571 would place Pierce County in a position where we must choose between inclusion in the PL 84-99 program or compliance with other laws and legal obligations such as the Endangered Species Act (ESA).

Specifically, we would like to bring several concerns to your attention.

1. The proposed variance process is so burdensome, that it provides little to no variance possibility at all. Local sponsors must pay for detailed scientific and engineering studies. If Pierce County were to pursue variances on a project-by-project basis as contemplated by this process, it would be cost prohibitive. In most cases, it would be less expensive to complete the repair with local funds than to apply for the variance and stay within the PL 84-99 program.
2. The proposed standards are inconsistent with the August 27, 1988 Agreement between the Puyallup Tribe of Indians, local governments in Pierce County, the State of Washington, the United States of America and the certain private property owners. As part of this Agreement, the parties agreed to the Puyallup River Vegetation Management Program which protects fisheries resources through careful management of levee vegetation removal.
3. ETL 110-2-571 and its requisite levee vegetation removal conflicts with Federal law and policy. If levee vegetation removal is required to remain in the PL 84-99 program, then we may well be at risk of "incidental take" under the Endangered Species Act. The removal of levee vegetation reduces cover and shade for listed salmonid species. Levee



vegetation removal as required by ETL 110-2-571 can increase water temperatures resulting in a river being listed or staying listed under Section 303(d) of the Clean Water Act. Higher water temperatures are also problematic for listed salmonid species in the Puget Sound region.

4. Levee vegetation removal is contrary to the National Marine Fisheries Services' (NMFS) Biological Opinion (BiOp) issued following an assessment of FEMA's National Flood Insurance Program. In the BiOp's Reasonable and Prudent Alternative #5, NMFS recommends that: 1) FEMA no longer recognize the flood protection offered by levees maintained in a way that reduces aquatic habitat and 2) communities dropped from the PL84-99 program because of vegetation management compliance issues should not be penalized and should still benefit from emergency funding for flood damage repairs.
5. Levee vegetation removal is also contrary to the 1988 Land Settlement Agreement and its associated Puyallup River Vegetation Management Program. In this document, the Puyallup Tribe, the United States of America, the State of Washington, Pierce County, local governments in Pierce County and certain private property owners agreed that: "No vegetation removal shall be permitted on the banks of any river or stream or any gravel bar in the Puyallup River drainage basin." The words "bank" and "levee" are used interchangeably in the Lands Settlement Agreement.
6. No means of appeal are included. An appeal process should be available to applicants whose variances are denied by the Corps.
7. Certain controlled vegetation regimes can be beneficial to the structural integrity of our flood control facilities. A new element should be integrated into the ETL to address the beneficial aspects of these vegetation regimes.

To address these concerns, we recommend that the Corps revise the variance process so that it is neither onerous in its request for information, nor cost prohibitive. A part of the variance process should include the possibility of regional variances in areas, such as the Puget Sound Region, where the removal of levee vegetation is contrary to the ESA and other legal obligations. To do otherwise will place local communities in the position of choosing between inclusion in the PL 84-99 program and possibly running afoul of other legal obligations.

Thank you for your consideration.

Sincerely,



Harold Smelt, PE
Surface Water Management, Manager

cc: Brian Ziegler, Director
Pat McCarthy, Executive
Joyce McDonald, Councilmember